UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT GREENEVILLE

UNITED STATES OF AMERICA	)	
	)	No. 2:14-CR-76
v.	)	
	)	JUDGE GREER
HUGH SACKETT	)	

PLEA AGREEMENT

The United States of America, by the United States Attorney for the Eastern District of Tennessee, and the defendant, Hugh Sackett, and the defendant's attorney, John T. Milburn Rogers, have agreed upon the following:

1. The defendant will plead guilty to the following count in the indictment:

a) Count One. Conspiring to commit wire fraud and mail fraud in violation of 18 U.S.C. §§ 1349, 1341, and 1343.

The punishment for this offense is as follows. A maximum term of imprisonment of 20 years; a maximum fine of $250,000; up to three years on supervised release; $100 special assessment; forfeiture of the fruits and instrumentalities of the offense; and restitution as ordered by the court.

2. In consideration of the defendant's guilty plea, the United States agrees to move the Court at the time of sentencing to dismiss all seven remaining counts against the defendant in this indictment and to dismiss the claims for forfeiture against the defendant.

3. The defendant has read the indictment, discussed the charges and possible defenses with defense counsel, and understands the crimes charged. The defendant is pleading guilty because the defendant is in fact guilty.

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4. In support of the defendant's guilty plea, the defendant agrees and stipulates to the following facts, which satisfy the offense elements. These are the facts submitted for purposes of the defendant's guilty plea. They do not necessarily constitute all of the facts in the case. Other facts may be relevant to sentencing. Both the defendant and the United States retain the right to present additional facts to the Court to ensure a fair and appropriate sentence in this case.

a. At all times relevant to the indictment, the defendant Hugh Sackett lived in Anderson, South Carolina, and New Century Coal operated out of offices located in Johnson City, in the Eastern District of Tennessee.

b. In May 2011, Brian C. Rose caused a corporation known as New Century Coal to become organized under the laws of the State of Nevada and established an office for New Century Coal at 1009 Lark Street, Johnson City, Tennessee. Brian C. Rose was the developer, leader, and decision-maker for New Century Coal from January 1, 2011 through June 30, 2014. New Century Coal was a fraud scheme based upon the promised development of "Blue Gem" coal.

c. Rose and associates marketed New Century Coal as an issuer/sponsor of partnerships with individual investors for the purpose of placing investors in limited liability partnerships in specific coal mine operations, and as the partnership mine operator of each specific coal mine. Each offering was limited to a small number of shares for a high investment, assigned to a specific coal mine.

d. New Century Coal never produced much, if any, coal, never made any sales of coal, and never made any legitimate return on investment to its investors. Brian Rose never intended to produce coal and never intended to return investment to the investors in New Century Coal. The purpose of New Century Coal was to defraud investors.

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e. Sackett worked for Energy Group Funds, Inc., that had a contract with New Century Coal for consulting services, and whose duties included (but were not limited to): limited contact with potential investors; preparation of responses made by New Century Coal to Requests for Production of Documents by the Securities and Exchange Commission Enforcement Division; preparation of legal documentation; and creating the false appearance that New Century Coal observed corporate formalities.

f. ~~g~~. During the course of the conspiracy, Sackett was involved as a co-conspirator in the investment of more than $2 million made by individuals who reside in Mountain Grove, Missouri and travelled to meet with these individual investors, including trips to Mountain Grove, Missouri and London, Kentucky; and

~~g.~~ ~~During the course of the conspiracy, Sackett was involved as a co-conspirator in the investment of more than $2 million~~ made by investors Jessup and Odens, including meeting with those investors in a trip to Knoxville, Tennessee

h. From May 2011 through June 30, 2014, New Century Coal made numerous material misrepresentations and false statements to investors and potential investors. Such false and material statements included the following:

1) false statements about New Century Coal's successful business history;

2) false information about New Century Coal's history of exploration, development, and production of coal;

3) false promises of quarterly dividend payments and high returns on investment;

4) false promises that investor funds would be applied to the exploration, development, and production of coal;

5) false statements that New Century Coal would provide quarterly operating and production reports;

6) false promises that New Century Coal would maintain separate capital accounts for each investor;

7) untruthful explanations for the non-production of coal and delays in the production of coal;

8) fabrication of false vendor invoices and expense reports which created the illusion that New Century Coal was engaged in the exploration, development, and production of coal;

9) deceitful creation of substitute coal mine partnerships when the initial partnership failed to produce coal in a timely manner.

i. Brian Rose diverted New Century Coal investor funds away from the exploration, development, and production of coal as promised to New Century Coal investors. Brian Rose used investor funds to compensate New Century Coal associates and to divert investor funds from New Century Coal.

j. From on or about May 2011 through on or about June 30, 2014, defendant Hugh Sackett agreed to commit wire fraud and mail fraud on investors in New Century Coal. Hugh Sackett knew the unlawful purpose of the fraud scheme and willfully joined the scheme. Hugh Sackett and others, including but not limited to his co-defendants, pursued a scheme to defraud investors, to obtain money or property by materially false pretenses, and willfully participated in the scheme with knowledge of its fraudulent nature. At all relevant times, Hugh Sackett acted with the intent to defraud New Century Coal investors. At all relevant times, Hugh Sackett directed, arranged, and caused the interstate transmission of writings, signals, and sounds by wire and the

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shipment of documents by private and public mails which advanced, furthered, and carried out the scheme to defraud.

5. The defendant understands that by pleading guilty the defendant is giving up several rights, including:

a) the right to plead not guilty;

b) the right to a speedy and public trial by jury;

c) the right to assistance of counsel at trial;

d) the right to be presumed innocent and to have the burden of proof placed on the United States to prove the defendant guilty beyond a reasonable doubt;

e) the right to confront and cross-examine witnesses against the defendant;

f) the right to testify on one's own behalf, to present evidence in opposition to the charges and to compel the attendance of witnesses; and

g) the right not to testify and to have that choice not used against the defendant.

6. The parties agree that the appropriate disposition of this case could be the following as to each count:

a) The Court may impose any lawful term of imprisonment, any lawful fine, and any lawful term of supervised release up to the statutory maximum;

b) The Court will impose special assessment fees as required by law; and

c) The Court may order restitution as appropriate.

No promises have been made by any representative of the United States to the defendant as to what the sentence will be in this case. Any estimates or predictions made to the defendant by defense counsel or any other person regarding any potential sentence in this case are not binding on the Court, and may not be used as a basis to rescind this plea agreement or withdraw the defendant's

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guilty plea. The defendant understands that the sentence in this case will be determined by the Court after it receives the presentence report from the United States Probation Office and any information presented by the parties. The defendant acknowledges that the sentencing determination will be based upon the entire scope of the defendant's criminal conduct, the defendant's criminal history, and pursuant to other factors and guidelines as set forth in the Sentencing Guidelines and the factors set forth in 18 U.S.C. § 3553.

7. The parties agree to the following for purposes of calculating the defendant's Advisory Guideline Range under the United States Sentencing Guidelines:

a. The base offense level under U.S.S.G. § 2B1.1 (a) is 7;

b. The loss amount for purposes of U.S.S.G. § 2B1.1(b)(1) is more than $1 million, which yields an increase of 16 offense levels;

c. The offense involved more than 10 victims for purposes of U.S.S.G. § 2B1.1(b)(2), which yields an increase of 2 offense levels;

d. The defendant will not be assessed the following sentencing enhancements:

1) The sophisticated means enhancement under U.S.S.G. § 2B1.1(b)(10)(c);

2) The vulnerable victim enhancement under U.S.S.G. § 3A1.1;

3) The manager/supervisor/organizer/leader enhancement under U.S.S.G. § 3B1.1.

8. Given the defendant's agreement to plead guilty, the United States will not oppose a two-level reduction for acceptance of responsibility under the provisions of Section 3E1.1(a) of the Sentencing Guidelines. Further, if the defendant's offense level is 16 or greater, and the defendant is awarded the two-level reduction pursuant to Section 3E1.1(a), the United States agrees to move, at or before the time of sentencing, the Court to decrease the offense level by one additional level

pursuant to Section 3E1.1(b) of the Sentencing Guidelines. Should the defendant engage in any conduct or make any statements that are inconsistent with accepting responsibility for the defendant's offense, including violations of conditions of release or the commission of additional offenses prior to sentencing, the United States will be free not to make such motion or to withdraw such motion if already made, and will be free to recommend to the Court that the defendant not receive any offense level reduction for acceptance of responsibility under Section 3E1.1 of the Sentencing Guidelines.

9. The defendant agrees to pay the special assessment in this case prior to sentencing.

10. The defendant agrees that the court shall order restitution, pursuant to any applicable provision of law, for any loss caused to: (1) the victims of any offense charged in this case (including dismissed counts); and (2) the victims of any criminal activity that was part of the same course of conduct or common scheme or plan as the defendant's *charged* offenses.

11. Unless otherwise limited by an agreed preliminary order of forfeiture, the defendant agrees to forfeit to the United States immediately and voluntarily any and all assets and property, or portions thereof, subject to forfeiture as proceeds of the defendant's criminal activities in violation of 18 U.S.C. 1349, 1341, and 1343 which are in the possession or control of the defendant or the defendant's nominees. Specifically, the defendant agrees to forfeit a personal money judgment in favor of the United States and against the defendant in the amount of $10,000.

12. Financial Obligations. The defendant agrees to pay all fines and restitution imposed by the Court to the Clerk of Court. The defendant also agrees that the full fine and/or restitution amounts shall be considered due and payable immediately. If the defendant cannot pay the full amount immediately and is placed in custody or under the supervision of the Probation Office at any time, the defendant agrees that the Bureau of Prisons and the Probation Office will have the

authority to establish payment schedules to ensure payment of the fine and/or restitution. The defendant further agrees to cooperate fully in efforts to collect any financial obligation imposed by the Court by set-off of federal payments, execution on non-exempt property, and any other means the United States deems appropriate. The defendant and counsel also agree that the defendant may be contacted post-judgment regarding the collection of any financial obligation imposed by the Court without notifying the defendant's counsel and outside the presence of the defendant's counsel. In order to facilitate the collection of financial obligations to be imposed with this prosecution, the defendant agrees to disclose fully all assets in which the defendant has any interest or over which the defendant exercises control, directly or indirectly, including those held by a spouse, nominee, or other third party. In furtherance of this agreement, the defendant additionally agrees to the following specific terms and conditions:

a) If so requested by the United States, the defendant will promptly submit a completed financial statement to the U.S. Attorney's Office, in a form it provides and as it directs. The defendant promises that such financial statement and disclosures will be complete, accurate, and truthful.

b) The defendant expressly authorizes the U.S. Attorney's Office to obtain a credit report on the defendant in order to evaluate the defendant's ability to satisfy any financial obligation imposed by the Court.

c) If so requested by the United States, the defendant will promptly execute authorizations on forms provided by the U.S. Attorney's office to permit the U.S. Attorney's Office to obtain financial and tax records of the defendant.

13. a) In consideration of the concessions made by the United States in this agreement and as a further demonstration of the defendant's acceptance of responsibility for the

offense committed, the defendant agrees not to file a direct appeal of the defendant's conviction or sentence except the defendant retains the right to appeal a sentence imposed above the sentencing guideline range determined by the district court or above any mandatory minimum sentence deemed applicable by the district court, whichever is greater.

b) In addition, the defendant knowingly and voluntarily waives the right to file any motions or pleadings pursuant to 28 U.S.C. § 2255 or to collaterally attack the defendant's conviction and/or resulting sentence. The parties agree that the defendant retains the right to raise, by way of collateral review under § 2255, claims of ineffective assistance of counsel or prosecutorial misconduct not known to the defendant by the time of the entry of judgment.

14. This agreement becomes effective once it is signed by the parties and is not contingent on the defendant's entry of a guilty plea. If the United States violates the terms of this agreement, the defendant will have the right to withdraw from this agreement. If the defendant violates the terms of this agreement in any way (including but not limited to failing to enter guilty plea as agreed herein, moving to withdraw guilty plea after entry, or by violating any court order or any local, state or federal law pending the resolution of this case), then the United States will have the right to void any or all parts of the agreement and may also enforce whatever parts of the agreement it chooses. In addition, the United States may prosecute the defendant for any and all federal crimes that the defendant committed related to this case, including any charges that were dismissed and any other charges which the United States agreed not to pursue. The defendant expressly waives any statute of limitations defense and any constitutional or speedy trial or double jeopardy defense to such a prosecution. The defendant also understands that a violation of this plea agreement by the defendant does not entitle the defendant to withdraw the defendant's guilty plea in this case.

15. The United States will file a Supplement in this case, as is routinely done in every case, even though there may or may not be any additional terms. If additional terms are included in the Supplement, they are hereby fully incorporated herein.

16. This plea agreement and supplement constitute the full and complete agreement and understanding between the parties concerning the defendant's guilty plea to the above-referenced charges, and there are no other agreements, promises, undertakings, or understandings between the defendant and the United States. The parties understand and agree that the terms of this plea agreement can be modified only in writing signed by all of the parties and that any and all other promises, representations, and statements whether made before, contemporaneous with, or after this agreement, are null and void.

WILLIAM C. KILLIAN
UNITED STATES ATTORNEY

11-25-2014
Date

By: Helen Smith
HELEN C.T. SMITH
Assistant United States Attorney

11/25/14
Date

H Sackett
HUGH SACKETT
Defendant

11/26/14
Date

J. Rogers
JOHN T. MILBURN ROGERS
Attorney for the Defendant